



Holly Area Schools

Excellence in Action!

Section 504 Manual

Holly Area Schools District

I. Section 504 Policy

Policy Statement

It is the intent of the Board of Education to provide a free appropriate public education to each student with a disability within its jurisdiction regardless of the nature or severity of the disability.

It is further the intent of the district to ensure that each student with a disability within the meaning of Section 504 of the Rehabilitation Act of 1973, is identified, evaluated, and provided with a free appropriate public education (FAPE). FAPE is defined as the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of the student with a disability as adequately as the needs of non-disabled students are met.

The superintendent of Holly Area Schools has appointed Michelle Flessa, Director of Special Services, to serve as the district Section 504 Coordinator responsible for the implementation of this policy within the Holly Area School District. Contact phone number is 248-328-3170.

An administrator, or designee, from each building will be identified as the building Section 504 Coordinator.

II. Definition of eligible students under Section 504

- A. "Handicapped person" – is any person who:
1. has a physical or mental impairment, which substantially limits one or more major life activities;
 2. has a record of such an impairment; or
 3. is regarded as having such an impairment.
- B. "Physical or mental impairment" is:
1. any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or
 2. any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness and specific learning disabilities.
- C. "Major life activities" include but are not limited to:
caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. Major life activities also include "the operation of a major bodily

function, including, but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.”

- D. “Has a record of such impairment” means has a history of, or has been misclassified as having mental or physical impairment that substantially limits one or more of the major life activities.
- E. “Is regarded as having impairment” means:
 - 1. has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation;
 - 2. has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or
 - 3. has none of the impairments listed under the definition of “physical or mental impairment,” but is treated by a recipient as having such an impairment.

Note: Section 504 does not require the District to develop a Section 504 plan and provide FAPE to a student who has a “record of” or is “regarded as” having an impairment. A student must have an *actual* physical or mental impairment that substantially limits one or more major life activities as defined under the Act to be entitled to a Section 504 Plan/FAPE.

Students who are identified as eligible for special education programs and services according to the IDEA criteria are not addressed under this policy. The needs of such students are provided for elsewhere under state and federal law, and the Oakland Schools ISD Special Education Plan.

III. Building Level Interventions

A. GENERAL FRAMEWORK

At each building level (elementary and secondary) a Student Assistance Team (hereafter referred to as “the team”) will be assembled. This team is designed to evaluate the educational needs of a student with or without a disability so the needs of a student are addressed.

The team is comprised of persons who collectively possess the following: knowledge of the student, evaluation data and programs and services. This team may include: administrators, teachers, parents, and building level support staff. The team meets on a regular basis to evaluate, discuss and initiate intervention strategies and monitor progress of the students.

B. PRE-REFERRAL TEAM STRATEGIES

There is a growing evidence of the effectiveness of pre-referral team strategies as a method for strengthening educational opportunities and services for students with who might otherwise

experience difficulties in school. The implementation of such strategies helps teachers vary instructional and behavioral methodologies and expectations and by doing so:

1. Assists teachers with students who present a wide variety of behavioral levels and needs;
2. Strengthens educational opportunities within the general education programs by fostering teacher growth; and
3. Reduces the need for formal referrals since more students with special needs are being successfully accommodated and served appropriately within general education programs.

Pre-referral team strategies as vehicles for servicing students experiencing difficulties in school are strongly encouraged, but not required, before more formal referrals under Section 504 are initiated. 504.

NOTE: These pre-referral procedures are not intended to be a prerequisite to any necessary referrals for special education or Section 504. If at any time a teacher, counselor, administrator or other appropriate person suspects the student's difficulties are attributable to a disability (a physical or mental impairment that substantially limits a major life activity), that student must be referred for an evaluation. Moreover, if a parent at any time asks for a Section 504 evaluation, the district must either honor that request or, if there is insufficient evidence to warrant an evaluation, the parent must be notified and provided with his/her procedural safeguards, including due process rights under Section 504.

C. SPECIFIC 504 PROCEDURAL COMPONENTS

- Building level interventions
- Identification and referral procedures
- Evaluation
- Section 504 Plan
- Monitoring student progress
- Procedural safeguards
- Time frames for evaluation, placement and hearings
- Grievance procedures

D. PRE-REFERRAL AND REFERRAL DOCUMENTATION

The team addresses and is responsible for documenting both pre-referral activities for struggling students and Section 504 referral activities. The team also records intervention strategies, reviews implementation and makes modifications as needed. The team will complete the following steps for providing support and documentation for struggling students:

1. Staff and/or parents identify a student as struggling academically or behaviorally.
2. Staff collects data: (work samples, observations, baseline data, interviews) to plan general education interventions, including differentiated instruction.
3. The team reviews screening data to identify, analyze and prioritize concerns.
 - a. eliminate irrelevant information
 - b. determine if additional information is required
4. The team develops interventions and strategies.
 - a. sets timelines
 - b. identifies responsibilities of team members
5. Strategies are implemented.
6. The team meets to review outcomes of interventions
 - a. concerns are eliminated
 - b. concerns persist
 - c. set new interventions

Note: This problem-solving process may be repeated for cycles of increasing intensity, but is not a prerequisite to and may not be used to delay an appropriate referral under Section 504 or IDEA in the event of a suspected disability.

E. IDENTIFICATION AND REFERRAL PROCEDURES

District staff must refer any student suspected of having a disability under Section 504 that may require special accommodations, instruction, adaptations, or related aids and services in order to receive a free appropriate public education. Referral sources for a student suspected of having a physical or mental impairment that substantially limits a major life activity may include teachers or other certified school employees, his/her parents or community agencies. All referrals will be submitted to building coordinator for the building the student attends.

The team will consist of persons knowledgeable about the student's individual needs, the meaning of the evaluation data, and options for placement, strategies and interventions. The building's Section 504 Coordinator will monitor the composition of the team to ensure that qualified personnel participate.

The team will promptly consider the referral and based upon a review of the student's records, including academic, social and behavioral records, make a decision as to whether further evaluation is appropriate.

F. EVALUATION

When a parent or other referral source submits to the building team a specific request for an evaluation, assessment, or related services, regardless of the specific phrasing of the request, the district will, within 15 school days, take one of the following steps:

1. Schedule a team meeting.
2. Complete the Section 504 Referral/Evaluation Planning form.
3. Provide parent his/her Section 504 procedural safeguards.

The team will develop an evaluation plan based on information needed to determine the nature of the student's disability and the impact of the disability upon the student's education. This plan shall include information from a variety of sources, including, but not limited to, aptitude and achievement tests, teacher recommendations, reports of physical condition, social and cultural background and adaptive behavior. The evaluation may also include consideration of any behaviors that interfere with regular participation of a student who otherwise meets the criteria for participation in the education program and/or district activities. Upon completion of the evaluation plan, the team shall obtain written consent from the parent to evaluate the student under Section 504. The district will adhere to a timeframe of 30 school days from receipt of the parent's consent to initial evaluation to the convening of a 504-team meeting to determine eligibility.

Final determination of a student's 504 eligibility will not be made by the team without first inviting the parent(s)/guardian(s) of the student to participate in the meeting concerning such a determination.

The team will document evaluation results and the eligibility determination. The parent(s)/guardian(s) of the student will be notified of the team's eligibility determination and will be provided with the Section 504 procedural safeguards, including the right to an impartial hearing and review.

G. INDIVIDUAL 504 PLAN

For each student who has been identified as having a disability within the meaning of Section 504 and in need of special accommodations, instruction, adaptations, or related aids and services, the team shall be responsible for determining a 504 Plan to ensure that the student receives a free appropriate public education. Section 504 Plan form will be completed by the team.

In developing the 504 Plan, the team will carefully consider the evaluation information from a variety of sources, document the information considered, not rely on assumptions regarding persons with disabilities or classes of such persons, ensure that students with disabilities are educated with students without disabilities to the maximum extent appropriate to meet the needs of the student with a disability (unless the education of the student in the regular environment with the use of supplementary aids and services cannot be achieved satisfactory), and ensure that students with disabilities participate with student without disabilities in nonacademic services and activities to the maximum extent appropriate to the needs of the student with a disability.

The parent(s)/guardian(s) will be invited to participate in a team meeting where the Section 504 plan will be developed. Parent(s)/guardian(s) will be provided with an advance copy of the student's 504 evaluation report prior to the 504 plan development meeting.

The team may also determine that no special accommodations, instruction, adaptations or related aids and services are needed. If so, the record of the team's proceedings will reflect the identification of the student as a person with a disability (if any) and state the basis for the decision that no accommodations are presently needed. The parent shall be provided a copy of the Section 504 procedural safeguards.

The team will notify the parent(s)/guardian(s) in writing of its final decision concerning the Section 504 services to be provided (if any), and provide the parent(s)/guardian(s) a copy of the Section 504 procedural safeguards, including the right to an impartial hearing and review.

If a plan for providing special accommodations, instruction, adaptations or related aids and services is developed, all school personnel who work with the student will be informed of the Section 504 Plan.

H. MONITORING OF STUDENT PERFORMANCE/PERIODIC REEVALUATION

The building 504 coordinators will collaborate with the student's teachers to annually monitor the performance of each student with a disability and the effectiveness of the student's individual 504 plan.

The team will provide for reevaluations (triennial unless specified otherwise on the 504 plan) if the student continues to be a student with a disability under 504. Or, more frequently if conditions warrant to determine whether the special accommodations, instruction, adaptations, or related aids and services are appropriate to meet the student's needs.

Prior to any subsequent significant change in the educational program of a student with a disability, the team will conduct a reevaluation of the student's needs.

IV. Procedural Safeguards

The parent(s)/guardian(s) will be notified in writing of all district decisions concerning the identification, evaluation, or educational placement of the student made under this policy.

As to such district decisions, parent(s)/guardian(s) will have the right to an impartial hearing (Section 504 due process hearing), with the opportunity to participate by the parent(s)/guardian(s) and their counsel.

In order to request a Section 504 Due Process Hearing the parent(s)/guardian(s) must submit a signed, written request to the District Section 504 Coordinator. The request must contain the name of the student, the address of the residence of the student, the name of the school the student is

attending, a description of the nature of the problem to be addressed at the hearing and a proposed resolution of the problem.

TIME FRAMES FOR DUE PROCESS HEARING

The district will adhere to the following time frames for Section 504 due process hearing.

- a) a hearing will be scheduled and completed not less than 30, nor more than 75 calendar days following receipt of a written request from the parent.
- b) not later than 30 calendar days after the hearing, the hearing officer will do the following:
 1. Reach a final decision regarding the hearing; and
 2. Send a copy of the decision to each party.
- c) in the absence of an appeal, the decision of the hearing officer will be implemented by the public agency within 15 school days of the agency's receipt of the decision.

GRIEVANCE PROCEDURE

1. A complaint may be filed alleging a specific violation of the expressed terms of the district's 504 policy or 504 procedures or the US Department of Education Section 504 regulations.
2. The grievant is encouraged, but is not required, to discuss specific concerns orally with the building 504 Coordinator and then the district Section 504 Coordinator before they put their concerns in writing.
3. A written complaint, including the grievant's full name, address and telephone number, must be signed by the grievant and submitted to the district Section 504 Coordinator, 920 Baird Street, Holly MI 48442; phone 248-328-3170. If the Section 504 coordinator is the subject of the complaint, the Superintendent will appoint another administrator to conduct the investigation.
4. The district Section 504 Coordinator will meet with the grievant and conduct an investigation of the facts and circumstances surrounding the complaint. A meeting date with the grievant will be established within 5 school days of the receipt of the written complaint unless there are extenuating reasons. The grievant may submit names of witnesses and any other evidence for consideration by the Section 504 coordinator.
5. The district Section 504 Coordinator will provide a written response to the grievant including any action to be taken, within 14 school days after the meeting held with the grievant.
6. If the written response of the district Section 504 Coordinator does not satisfy the grievant, then the decision can be appealed in writing to the superintendent. The superintendent may conduct additional investigation of the facts and circumstances surrounding the complaint.
7. Upon receipt of the Section 504 complaint appeal, the superintendent will issue a written decision to the grievant within 14 days.
8. Holly Area Schools strictly prohibits any form of retaliation against persons who utilize this Grievance Procedure or cooperate in an investigation under these procedures.

Part 1 – Section 504 Referral/Evaluation

Part 2 – Eligibility Determination

Part 3 – Section 504 Plan

**Holly Area Schools
Parent Consent to Evaluate**

Student Name: _____ Birth Date: _____

Building: _____ Grade: _____

Date Parent Contacted to Request Consent: _____

Your child _____ has been referred for evaluation under Section 504.

Proposed Evaluation:

If you consent to having your child evaluated, the following persons may be involved in reviewing/gathering information:

General Education/Special Education Teacher

These teachers may assess the student's academic achievement and/or classroom observations.

Psychologist/Social Worker

Psychologists and social workers may assess a student's strengths and weaknesses in intellectual functioning, in the areas of academics, social/emotional adjustment.

Speech and Language Therapist

The speech therapist may assess a student's abilities in the areas of language, development, articulation, voice, and fluency.

Other: (Identify and describe: _____

Parent Consent

In consenting to the evaluation of _____, I understand that the results of this evaluation will be used to determine eligibility under Section 504 and the student's individual education needs. The results of this evaluation will be presented at a Section 504 planning meeting to which I will be invited to attend.

- I understand the content of this notice for proposed evaluation
- I have received a copy of Parental Rights
- I give permission for the above evaluation
- I refuse permission for the above evaluation

Parent/Guardian Signature: _____ Date: _____

Person Obtaining Consent: _____ Date: _____

Section 504

Parent/Student Rights Procedural Safeguard

SECTION 504 OF THE REHABILITATION ACT OF 1973

Parent/Student Rights Identification, Evaluation and Placement

NOTICE OF 504 RIGHTS

The purpose of this notice is to inform parents and students of the rights granted to them under Section 504. The Federal regulations that implement Section 504 are found at Title 34, Part 104 of the code of Federal Regulations. These regulations include the following rights:

NOTICE: You have the right to:

- A. Receive written notice before the district initiates an evaluation of your child, refuses to evaluate your child, makes a decision as to whether your child has a disability, and makes a decision as to what accommodations, adaptations or related aids and services are appropriate to meet your child's education needs.
- B. Examine relevant records.
- C. File a grievance over an alleged violation of federal 504 regulations or the district's 504 policy and procedures.
- D. Request mediation or a due process hearing if you question the district's actions with respect to identification, evaluation, or placement under Section 504.
- E. Have the hearing conducted by an impartial hearing officer.
- F. An opportunity to participate in the hearing and be represented by counsel.
- G. Have a written record of the hearing.
- H. Obtain written findings of facts and a written decision.
- I. Appeal the hearing officer's decision to a court of competent jurisdiction.

ADDITIONAL RIGHTS:

- A. Have your children receive a free appropriate public education. This includes the right to be educated with non-disabled students to the maximum extent appropriate. It also includes the right to have the district make special accommodations to allow your child an equal opportunity to participate in school and school-related activities.
- B. Have your child educated in facilities and receive services comparable to those provided to non-disabled students.
- C. Have your child be given an equal opportunity to participate in nonacademic and extracurricular activities offered by the district.

SECTION 504 SAFEGUARDS

The parent(s)/guardian(s) shall be notified in writing of all district decisions concerning the identification, evaluation, or educational services for a student made under this policy. In the event of a disagreement with a district decision regarding eligibility and/or services, parent(s)/guardian(s) shall have the right to request an impartial hearing with opportunity for participation by the parent(s)/guardian(s) and their counsel.

CONSENT: You have the right to:

Agree or disagree to the implementation of the district's proposed evaluation plan for your child or to its proposed 504 plan for your child.

EVALUATION PROCEDURES:

- A. Evaluation shall be conducted in the student's native language.
- B. The evaluation materials are to be validated for the specific purpose for which they are used.
- C. The evaluations are to be administered by trained personnel in conformity with the instructions of the producer.
- D. Evaluation materials include those tailored to assess the specific areas of educational needs, and are not just a general I.Q. test.
- E. Evaluation materials are selected and administered so as best to ensure the results accurately reflect aptitude and achievement level, rather than the impairment of the person tested, unless the test measures impairment.
- F. An evaluation should draw on information from a variety of sources.
- G. Parent(s)/guardian(s) should have an opportunity to examine the student's relevant educational records and receive all information in their native language and primary mode of communication.
- H. The eligible student has the right to periodic reevaluation and an evaluation before any significant change in program/service modification.
- I. The eligibility determination and 504 plan development should be conducted by persons who know the student, the evaluation data, and placement options.

Accommodations

Note: Teams make individualized decisions to address student needs.

This is a list of sample accommodations. A Section 504 team is not limited to providing the student with the accommodations on this list. An eligible student must be afforded a free appropriate public education (FAPE) which is defined as the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of the student with a disability as adequately as the needs of students without disabilities.

Sample Accommodations

ENVIRONMENT

- Seat student near the teacher
- Seat student near a positive role model
- Stand near the student when giving directions or presenting lessons
- Avoid distracting stimuli (air conditioner, high traffic areas, etc.)
- Increase the distance between the desks
- Be aware of plants and animals
- Provide accommodations on playground and field trips
- Allow extra time to change classes
- Provide a sturdy carrel

PRESENTATION OF SUBJECT MATTER

- Write key points on the board
- Provide peer tutoring
- Visual aides
- Provide peer note taker
- Make sure directions are understood
- Include a variety of activities during each lesson
- Break longer presentations into shorter segments
- Provide written outline
- Allow student to tape record lessons
- Have student review key points
- Teach through multi-sensory modes
- Use computer-assisted instruction
- Present demonstrations
- Utilize manipulatives
- Pre-teach vocabulary
- Use color-coding
- Address student's learning style

ASSIGNMENTS/WORKSHEETS

- Give extra time to complete tasks
- Simplify complex directions
- Hand worksheets out one at a time
- Reduce the reading level of the assignments
- Require fewer correct responses to achieve grade
- Allow student to tape record assignments/homework
- Provide a structured routine in written form
- Provide study skills training/learning strategies
- Give frequent short quizzes and avoid long tests
- Shorten assignments; break work into smaller segments
- Allow typewritten assignments
- Use self-monitoring devices
- Reduce homework assignments
- Avoid penalizing for penmanship

TEST TAKING

- Allow open book exams
- Give exam orally
- Give take-home tests
- Use more objective items (fewer essay responses)
- Allow student to give test answers on tape recorder
- Give frequent short quizzes, not long exams
- Allow extra time for exam
- Read test items to student
- Administer test by resource person
- Provide a quiet place to take test
- Avoid penalizing for misspellings
- Reduce number of test items
- Reduce test items per page
- Grade by pass/fail
- Provide study guides

ORGANIZATION

- Provide peer assistance with organizational skills
- Assign volunteer homework buddy
- Allow student to have an extra set of books at home
- Send daily/weekly progress reports home
- Develop a reward system for in-school work and homework completion
- Provide student with a homework assignment notebook
- Teach organizational skills
- Post daily assignments
- Morning check-in to organize homework
- Afternoon check-out to organize homework

BEHAVIORS

- Praise specific behaviors
- Use self-monitoring strategies
- Give extra privileges and rewards
- Keep classroom rules simple and clear
- Make “prudent use” of negative

consequences

- Allow for short breaks between assignments
- Cue student to stay on task (nonverbal signal)
- Mark student’s correct answers, not the mistakes
- Implement a classroom behavior management system
- Allow student time out of seat (run errands, etc.)
- Ignore inappropriate behaviors not drastically outside classroom limits
- Allow legitimate movement
- Develop a contract with the student
- Increase the immediacy of rewards
- Implement time-out procedures

PARENT INVOLVEMENT

- Call parents immediately if the student:
- Parent conference, frequency:
- Parent will e-mail staff for academic updates, frequency _____

SPECIAL CONSIDERATIONS

- Suggest parenting programs
- In-service teacher(s) on student’s handicap
- Provide social skills group experiences
- Develop strategies for transitional periods
- Transportation Department notified of student’s disability
- Involve outside agency
- Provide group/individual restrictions
- Consider special diet restrictions
- Implement procedures for administering medication
- Allow exceptions/deviations to current policies and procedures (attendance,

Discipline

If a student who has been determined to be a student with a disability under Section 504 engages in behavior that is a violation of the district's code of conduct and is subject to either a long term suspension, or a series of suspensions, that constitutes a change of placement, the district must conduct a manifestation determination review (MDR) meeting. If the behavior for which the discipline was administered is found not to be a manifestation of the student's disability, the student may be disciplined in accordance with general education policy. If the behavior is a manifestation of the student's disability, absent an agreement between the district and the parent/guardian, the student must be returned to his/her current placement and the 504 Plan must be reviewed and revised as necessary.

NOTE:

If the student is eligible only under Section 504 (and not also eligible under IDEA) and is currently engaging in the illegal use of drugs or in the use of alcohol and commits a discipline code violation involving the use or possession of illegal drugs or alcohol, the student may be disciplined to the same extent as a similarly situated non-disabled student

MANIFESTATION DETERMINATION REVIEW (MDR)

Student's Name	Last:	First:	Middle Initial:
Student ID #:	Date of Birth:	Grade:	School:
Date of Review:		Disability:	

Student	District Representative
Parent	Member of the 504 team
Member of the 504 team	Member of the 504 team
Other	Other

Describe in detail the behavior subject to disciplinary removal:

<i>Review and describe the following information:</i>		
Information Reviewed	Data Source/Date	Summary of information
All relevant information in the student's file.		
The student's current 504.		
Teacher observation of the student.		
Relevant information provided by the parent.		

On the basis of the above review and the relationship of the behavior subject to discipline and the student's disability, respond to both of the following statements, and give the rationale for the response:

<p>1. The conduct in question was caused by or had a direct and substantial relationship to the student's disability.</p>	<input type="checkbox"/> Yes	Describe the relationship between the disability and the behavior
	<input type="checkbox"/> No	Describe why there is no relationship between the disability and the behavior.
<p>2. The conduct in question was the direct result of the school district's failure to implement the current 504 plan.</p>	<input type="checkbox"/> Yes	List the areas of non-implementation and the impact on the behavior.
	<input type="checkbox"/> No	List the areas of non-implementation. State why there is no impact on the behavior.
	<input type="checkbox"/> No	504 was fully implemented.

If the determination of the team is "yes" to either of the statements, then the behavior must be considered a manifestation of the student's disability, and the student returns to the previous placement (except in Special Circumstances).

The determination of the 504 team is that behavior subject to discipline is:

- A manifestation of the disability.

- Not a manifestation of the disability; student subject to general education
Disciplinary procedures.

Section 504 Rehabilitation Act of 1973

34 CFR - PART 104

NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Authority: 20 U.S.C. 1405; 29 U.S.C. 794.

Source: 45 FR 30936, May 9, 1980, unless otherwise noted.

SUBPART A General Provisions

104.1 Purpose.

The purpose of this part is to effectuate section 504 of the Rehabilitation Act of 1973, which is designed to eliminate discrimination on the basis of handicap in any program or activity receiving Federal financial assistance.

104.2 Application.

This part applies to each recipient of Federal financial assistance from the Department of Education and to each program or activity that receives or benefits from such assistance.

104.3 Definitions.

As used in this part, the term:

(a) The Act means the Rehabilitation Act of 1973, Pub. L. 93-112, as amended by the Rehabilitation Act Amendments of 1974, Pub. L. 93-516, 29 U.S.C. 794.

(b) Section 504 means section 504 of the Act.

(c) Education of the Handicapped Act means that statute as amended by the Education for all Handicapped Children Act of 1975, Pub. L. 94-142, 20 U.S.C. 1401 et seq.

(d) Department means the Department of Education.

(e) Assistant Secretary means the Assistant Secretary for Civil Rights of the Department of Education.

(f) Recipient means any state or its political subdivision, any instrumentality of a state or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.

(g) Applicant for assistance means one who submits an application, request, or plan required to be approved by a Department official or by a recipient as a condition to becoming a recipient.

(h) Federal financial assistance means any grant, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the Department provides or otherwise makes available assistance in the form of:

(1) Funds;

(2) Services of Federal personnel; or

(3) Real and personal property or any interest in or use of such property, including:

(i) Transfers or leases of such property for less than fair market value or for reduced consideration; and

(ii) Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal Government.

(i) Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property.

(j) Handicapped person.

(1) "Handicapped persons" means any person who:

(i) has a physical or mental impairment which substantially limits one or more major life activities,

(i i) has a record of such an impairment, or

(i i i) is regarded as having such an impairment.

(2) As used in paragraph (j)(1) of this section, the phrase:

(i) Physical or mental impairment means

(A) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive, genito-urinary; hemic and lymphatic; skin; and endocrine; or

(B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(i i) Major life activities means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(i i i) Has a record of such an impairment means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(j) Handicapped person.

(2) As used in paragraph (j)(1) of this section, the phrase:

(iv) Is regarded as having an impairment means

(A) has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation;

(B) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(C) has none of the impairments defined in paragraph (j)(2)(i) of this section but is treated by a recipient as having such an impairment.

(k) Qualified handicapped person means:

(1) With respect to employment, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question;

(2) With respect to public preschool elementary, secondary, or adult educational services, a handicapped person

(i) of an age during which non-handicapped persons are provided such services,

(i i) of any age during which it is mandatory under state law to provide such services to handicapped persons, or

(i i i) to whom a state is required to provide a free appropriate public education under section 612 of the Education of the Handicapped Act; and

(3) With respect to postsecondary and vocational education services, a handicapped person who meets the academic and technical standards requisite to admission or participation in the recipient's education program or activity;

(4) With respect to other services, a handicapped person who meets the essential eligibility requirements for the receipt of such services.

(l) Handicap means any condition or characteristic that renders a person a handicapped person as defined in paragraph (j) of this section.

104.4 Discrimination prohibited.

- (a) General. No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance.
- (b) Discriminatory actions prohibited.
- (1) A recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:
- (i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;
- (ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;
- (b) Discriminatory actions prohibited.
- (1)
- (iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others;
- (iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;
- (v) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipients program;
- (vi) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or
- (vii) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.
- (2) For purposes of this part, aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for handicapped and nonhandicapped persons, but must afford handicapped persons equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person's needs.
- (3) Despite the existence of separate or different programs or activities provided in accordance with this part, a recipient may not deny a qualified handicapped person the opportunity to participate in such programs or activities that are not separate or different.
- (4) A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration
- (i) that have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap,
- (ii) that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program with respect to handicapped persons, or
- (iii) that perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same State.
- (5) In determining the site or location of a facility, an applicant for assistance or a recipient may not make selections
- (i) that have the effect of excluding handicapped persons from, denying them the benefits of, or otherwise subjecting them to discrimination under any

program or activity that receives or benefits from Federal financial assistance or

(i i) that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to handicapped persons.

(b) Discriminatory actions prohibited.

(6) As used in this section, the aid, benefit, or service provided under a program or activity receiving or benefiting from Federal financial assistance includes any aid, benefit, or service provided in or through a facility that has been constructed, expanded, altered, leased or rented, or otherwise acquired, in whole or in part, with Federal financial assistance.

(c) Programs limited by Federal law. The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or executive order to a different class of handicapped persons is not prohibited by this part.

104.5 Assurances required.

(a) Assurances. An applicant for Federal financial assistance for a program or activity to which this part applies shall submit an assurance, on a form specified by the Assistant Secretary, that the program will be operated in compliance with this part. An applicant may incorporate these assurances by reference in subsequent applications to the Department.

(b) Duration of obligation.

(1) In the case of Federal financial assistance extended in the form of real property or to provide real property or structures on the property, the assurance will obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for the purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) In the case of Federal financial assistance extended to provide personal property, the assurance will obligate the recipient for the period during which it retains ownership or possession of the property.

(3) In all other cases the assurance will obligate the recipient for the period during which Federal financial assistance is extended.

(c) Covenants.

(1) Where Federal financial assistance is provided in the form of real property or interest in the property from the Department, the instrument effecting or recording this transfer shall contain a covenant running with the land to assure nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) Where no transfer of property is involved but property is purchased or improved with Federal financial assistance, the recipient shall agree to include the covenant described in paragraph (b)(2) of this section in the instrument effecting or recording any subsequent transfer of the property.

(c) Covenants.

(3) Where Federal financial assistance is provided in the form of real property or interest in the property from the Department, the covenant shall also include a condition coupled with a right to be reserved by the Department to revert title to the property in the event of a breach of the covenant. If a transferee of real property proposes to mortgage or otherwise encumber the real property as

security for financing construction of new, or improvement of existing, facilities on the property for the purposes for which the property was transferred, the Assistant Secretary may, upon request of the transferee and if necessary to accomplish such financing and upon such conditions as he or she deems appropriate, agree to forbear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.

104.6 Remedial action, voluntary action, and self-evaluation.

(a) Remedial action.

(1) If the Assistant Secretary finds that a recipient has discriminated against persons on the basis of handicap in violation of section 504 or this part, the recipient shall take such remedial action as the Assistant Secretary deems necessary to overcome the effects of the discrimination.

(2) Where a recipient is found to have discriminated against persons on the basis of handicap in violation of section 504 or this part and where another recipient exercises control over the recipient that has discriminated, the Assistant Secretary, where appropriate, may require either or both recipients to take remedial action.

(3) The Assistant Secretary may, where necessary to overcome the effects of discrimination in violation of section 504 or this part, require a recipient to take remedial action

(i) with respect to handicapped persons who are no longer participants in the recipient's program but who were participants in the program when such discrimination occurred or

(i i) with respect to handicapped persons who would have been participants in the program had the discrimination not occurred.

(b) Voluntary action. A recipient may take steps, in addition to any action that is required by this part, to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity by qualified handicapped persons.

(c) Self-evaluation.

(1) A recipient shall, within one year of the effective date of this part:

(i) Evaluate, with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons, its current policies and practices and the effects thereof that do not or may not meet the requirements of this part;

(i i) Modify, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, any policies and practices that do not meet the requirements of this part; and

(i i i) Take, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, appropriate remedial steps to eliminate the effects of any discrimination that resulted from adherence to these policies and practices.

(2) A recipient that employs fifteen or more persons shall, for at least three years following completion of the evaluation required under paragraph (c)(1) of this section, maintain on file, make available for public inspection, and provide to the Assistant Secretary upon request:

(i) A list of the interested persons consulted

(i i) a description of areas examined and any problems identified, and

(i i i) a description of any modifications made and of any remedial steps taken.

104.7 Designation of responsible employee and adoption of grievance procedures.

(a) Designation of responsible employee. A recipient that employs fifteen or more persons shall designate at least one person to coordinate its efforts to comply with this part.

(b) Adoption of grievance procedures. A recipient that employs fifteen or more persons shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part. Such procedures need not be established with respect to complaints from applicants for employment or from applicants for admission to postsecondary educational institutions.

104.8 Notice.

(a) A recipient that employs fifteen or more persons shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of handicap in violation of section 504 and this part. The notification shall state, where appropriate, that the recipient does not discriminate in admission or access to, or treatment or employment in, its programs and activities. The notification shall also include an identification of the responsible employee designated pursuant to 104.7(a). A recipient shall make the initial notification required by this paragraph within 90 days of the effective date of this part. Methods of initial and continuing notification may include the posting of notices, publication in newspapers and magazines, placement of notices in recipients' publication, and distribution of memoranda or other written communications.

(b) If a recipient publishes or uses recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants, or employees, it shall include in those materials or publications a statement of the policy described in paragraph (a) of this section. A recipient may meet the requirement of this paragraph either by including appropriate inserts in existing materials and publications or by revising and reprinting the materials and publications.

104.9 Administrative requirements for small recipients.

The Assistant Secretary may require any recipient with fewer than fifteen employees, or any class of such recipients, to comply with 104.7 and 104.8, in whole or in part, when the Assistant Secretary finds a violation of this part or finds that such compliance will not significantly impair the ability of the recipient or class of recipients to provide benefits or services.

104.10 Effect of state or local law or other requirements and effect of employment opportunities.

(a) The obligation to comply with this part is not obviated or alleviated by the existence of any state or local law or other requirement that, on the basis of handicap, imposes prohibitions or limits upon the eligibility of qualified handicapped persons to receive services or to practice any occupation or profession.

(b) The obligation to comply with this part is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for handicapped persons than for nonhandicapped persons.

34 CFR - PART 104

SUBPART B Employment Practices

104.11 Discrimination prohibited.

(a) General.

(1) No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity to which this part applies.

(2) A recipient that receives assistance under the Education of the Handicapped Act shall take positive steps to employ and advance in employment qualified handicapped persons in programs assisted under that Act.

(3) A recipient shall make all decisions concerning employment under any program or activity to which this part applies in a manner which ensures that discrimination on the basis of handicap does not occur and may not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of handicap.

(4) A recipient may not participate in a contractual or other relationship that has the effect of subjecting qualified handicapped applicants or employees to discrimination prohibited by this subpart. The relationships referred to in this paragraph include relationships with employment and referral agencies, with labor unions, with organizations providing or administering fringe benefits to employees of the recipient, and with organizations providing training and apprenticeship programs.

(b) Specific activities. The provisions of this subpart apply to:

(1) Recruitment, advertising, and the processing of applications for employment;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;

(3) Rates of pay or any other form of compensation and changes in compensation;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Leaves of absence, sick leave, or any other leave;

(6) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(8) Employer sponsored activities, including social or recreational programs; and

(9) Any other term, condition, or privilege of employment.

(c) A recipient's obligation to comply with this subpart is not affected by any inconsistent term of any collective bargaining agreement to which it is a party.

104.12 Reasonable accommodation.

(a) A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program.

(b) Reasonable accommodation may include:

(1) Making facilities used by employees readily accessible to and usable by handicapped persons, and

(2) job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar actions.

(c) In determining pursuant to paragraph (a) of this section whether an accommodation would impose an undue hardship on the operation of a recipient's program, factors to be considered include:

- (1) The overall size of the recipient's program with respect to number of employees, number and type of facilities, and size of budget;
 - (2) The type of the recipient's operation, including the composition and structure of the recipient's workforce; and
 - (3) The nature and cost of the accommodation needed.
- (d) A recipient may not deny any employment opportunity to a qualified handicapped employee or applicant if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

104.13 Employment criteria.

- (a) A recipient may not make use of any employment test or other selection criterion that screens out or tends to screen out handicapped persons or any class of handicapped persons unless:
- (1) The test score or other selection criterion, as used by the recipient, is shown to be job-related for the position in question, and
 - (2) alternative job-related tests or criteria that do not screen out or tend to screen out as many handicapped persons are not shown by the Director to be available.
- (b) A recipient shall select and administer tests concerning employment so as best to ensure that, when administered to an applicant or employee who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's or employee's job skills, aptitude, or whatever other factor the test purports to measure, rather than reflecting the applicant's or employee's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

104.14 Preemployment inquiries.

- (a) Except as provided in paragraphs (b) and (c) of this section, a recipient may not conduct a preemployment medical examination or may not make preemployment inquiry of an applicant as to whether the applicant is a handicapped person or as to the nature or severity of a handicap. A recipient may, however, make preemployment inquiry into an applicant's ability to perform job-related functions.
- (b) When a recipient is taking remedial action to correct the effects of past discrimination pursuant to 104.6 (a), when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity pursuant to 104.6(b), or when a recipient is taking affirmative action pursuant to section 503 of the Act, the recipient may invite applicants for employment to indicate whether and to what extent they are handicapped, Provided, That:
- (1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary or affirmative action efforts; and
 - (2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential as provided in paragraph (d) of this section, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in accordance with this part.
- (c) Nothing in this section shall prohibit a recipient from conditioning an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty, Provided, That:
- (1) All entering employees are subjected to such an examination regardless of handicap, and
 - (2) the results of such an examination are used only in accordance with the requirements of this part.

(d) Information obtained in accordance with this section as to the medical condition or history of the applicant shall be collected and maintained on separate forms that shall be accorded confidentiality as medical records, except that:

- (1) Supervisors and managers may be informed regarding restrictions on the work or duties of handicapped persons and regarding necessary accommodations;
- (2) First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment; and
- (3) Government officials investigating compliance with the Act shall be provided relevant information upon request.

34 CFR - PART 104 SUBPART C Program Accessibility

104.21 Discrimination prohibited.

No qualified handicapped person shall, because a recipient's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which this part applies.

104.22 Existing facilities.

- (a) Program accessibility. A recipient shall operate each program or activity to which this part applies so that the program or activity, when viewed in its entirety, is readily accessible to handicapped persons. This paragraph does not require a recipient to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons.
- (b) Methods. A recipient may comply with the requirements of paragraph (a) of this section through such means as redesign of equipment, reassignment of classes or other services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of health, welfare, or other social services at alternate accessible sites, alteration of existing facilities and construction of new facilities in conformance with the requirements of

104.23, or any other methods that result in making its program or activity accessible to handicapped persons. A recipient is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with paragraph (a) of this section. In choosing among available methods for meeting the requirement of paragraph (a) of this section, a recipient shall give priority to those methods that offer programs and activities to handicapped persons in the most integrated setting appropriate.

(c) Small health, welfare, or other social service providers.

If a recipient with fewer than fifteen employees that provides health, welfare, or other social services finds, after consultation with a handicapped person seeking its services, that there is no method of complying with paragraph (a) of this section other than making a significant alteration in its existing facilities, the recipient may, as an alternative, refer the handicapped person to other providers of those services that are accessible.

(d) Time period. A recipient shall comply with the requirement of paragraph (a) of this section within sixty days of the effective date of this part except that where structural changes in facilities are necessary, such changes shall be made within three years of the effective date of this part, but in any event as expeditiously as possible.

104.22 Existing facilities.

(e) Transition plan. In the event that structural changes to facilities are necessary to meet the requirement of paragraph (a) of this section, a recipient shall develop, within six months of the

effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The plan shall be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons. A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum:

- (1) Identify physical obstacles in the recipient's facilities that limit the accessibility of its program or activity to handicapped persons;
 - (2) Describe in detail the methods that will be used to make the facilities accessible;
 - (3) Specify the schedule for taking the steps necessary to achieve full program accessibility and, if the time period of the transition plan is longer than one year, identify the steps of that will be taken during each year of the transition period; and
 - (4) Indicate the person responsible for implementation of the plan.
- (f) Notice. The recipient shall adopt and implement procedures to ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of services, activities, and facilities that are accessible to and useable by handicapped persons.

104.23 New construction.

- (a) Design and construction. Each facility or part of a facility constructed by, on behalf of, or for the use of a recipient shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by handicapped persons, if the construction was commenced after the effective date of this part.
- (b) Alteration. Each facility or part of a facility which is altered by, on behalf of, or for the use of a recipient after the effective date of this part in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by handicapped persons.
- (c) Conformance with Uniform Federal Accessibility Standards.
- (1) Effective as of January 18, 1991, design, construction, or alteration of buildings in conformance with sections 3-8 of the Uniform Federal Accessibility Standards (UFAS) (Appendix A to 41 CFR subpart 101-19.6) shall be deemed to comply with the requirements of this section with respect to those buildings. Departures from particular technical and scoping requirements of UFAS by the use of other methods are permitted where substantially equivalent or greater access to and usability of the building is provided.
- (c) Conformance with Uniform Federal Accessibility Standards.
- (2) For purposes of this section, section 4.1.6(1)(g) of UFAS shall be interpreted to exempt from the requirements of UFAS only mechanical rooms and other spaces that, because of their intended use, will not require accessibility to the public or beneficiaries or result in the employment or residence therein of persons with physical handicaps.
- (3) This section does not require recipients to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member.
- [45 FR 30936, May 9, 1980; 45 FR 37426, June 3, 1980; 55 FR 52138, 52141, Dec. 19, 1990]

34 CFR - PART 104
SUBPART D Preschool, Elementary, and Secondary Education

104.31 Application of this subpart.

Subpart D applies to preschool, elementary, secondary, and adult education programs and activities that receive or benefit from Federal financial assistance and to recipients that operate, or that receive or benefit from Federal financial assistance for the operation of, such programs or activities.

104.32 Location and notification.

A recipient that operates a public elementary or secondary education program shall annually:

- (a) Undertake to identify and locate every qualified handicapped person residing in the recipient's jurisdiction who is not receiving a public education; and
- (b) Take appropriate steps to notify handicapped persons and their parents or guardians of the recipient's duty under this subpart.

104.33 Free appropriate public education.

(a) General. A recipient that operates a public elementary or secondary education program shall provide a free appropriate public education to each qualified handicapped person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's handicap.

(b) Appropriate education.

(1) For the purpose of this subpart, the provision of an appropriate education is the provision of regular or special education and related aids and services that

(i) are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met and

(ii) are based upon adherence to procedures that satisfy the requirements of 104.34, 104.35, and 104.36.

(2) Implementation of an individualized education program developed in accordance with the Education of the Handicapped Act is one means of meeting the standard established in paragraph (b)(1)(i) of this section.

(3) A recipient may place a handicapped person in or refer such person to a program other than the one that it operates as its means of carrying out the requirements of this subpart. If so, the recipient remains responsible for ensuring that the requirements of this subpart are met with respect to any handicapped person so placed or referred.

(c) Free education-

(1) General. For the purpose of this section, the provision of a free education is the provision of educational and related services without cost to the handicapped person or to his or her parents or guardian, except for those fees that are imposed on non-handicapped persons or their parents or guardian. It may consist either of the provision of free services or, if a recipient places a handicapped person in or refers such person to a program not operated by the recipient as its means of carrying out the requirements of this subpart, of payment for the costs of the program. Funds available from any public or private agency may be used to meet the requirements of this subpart. Nothing in this section shall be construed to relieve an insurer or similar third party from an otherwise valid obligation to provide or pay for services provided to a handicapped person.

(2) Transportation. If a recipient places a handicapped person in or refers such person to a program not operated by the recipient as its means of carrying out the requirements of this subpart, the recipient shall ensure that adequate transportation to and from the program is provided at no greater cost than would be incurred by the person or his or her parents or guardian if the person were placed in the program operated by the recipient.

(3) Residential placement. If placement in a public or private residential program is necessary to provide a free appropriate public education to a handicapped person because of his or her handicap, the program, including non-medical care and room and board, shall be provided at no cost to the person or his or her parents or

guardian.

(4) Placement of handicapped persons by parents. If a recipient has made available, in conformance with the requirements of this section and 104.34, a free appropriate public education to a handicapped person and the person's parents or guardian choose to place the person in a private school, the recipient is not required to pay for the person's education in the private school. Disagreements between a parent or guardian and a recipient regarding whether the recipient has made such a program available or otherwise regarding the question of financial responsibility are subject to the due process procedures of 104.36.

(d) Compliance. A recipient may not exclude any qualified handicapped person from a public elementary or secondary education after the effective date of this part. A recipient that is not, on the effective date of this regulation, in full compliance with the other requirements of the preceding paragraphs of this section shall meet such requirements at the earliest practicable time and in no event later than September 1, 1978.

104.34 Educational setting.

(a) Academic setting. A recipient to which this subpart applies shall educate, or shall provide for the education of, each qualified handicapped person in its jurisdiction with persons who are not handicapped to the maximum extent appropriate to the needs of the handicapped person. A recipient shall place a handicapped person in the regular educational environment operated by the recipient unless it is demonstrated by the recipient that the education of the person in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily.

Whenever a recipient places a person in a setting other than the regular educational environment pursuant to this paragraph, it shall take into account the proximity of the alternate setting to the person's home.

(b) Nonacademic settings. In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in 104.37(a)(2), a recipient shall ensure that handicapped persons participate with nonhandicapped persons in such activities and services to the maximum extent appropriate to the needs of the handicapped person in question.

(c) Comparable facilities. If a recipient, in compliance with paragraph (a) of this section, operates a facility that is identifiable as being for handicapped persons, the recipient shall ensure that the facility and the services and activities provided therein are comparable to the other facilities, services, and activities of the recipient.

104.35 Evaluation and placement.

(a) Preplacement evaluation. A recipient that operates a public elementary or secondary education program shall conduct an evaluation in accordance with the requirements of paragraph (b) of this section of any person who, because of handicap, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person in a regular or special education program and any subsequent significant change in placement.

(b) Evaluation procedures. A recipient to which this subpart applies shall establish standards and procedures for the evaluation and placement of persons who, because of handicap, need or are believed to need special education or related services which ensure that:

(1) Tests and other evaluation materials have been validated for the specific purpose for which they are used and are administered by trained personnel in conformance with the instructions provided by their producer;

(2) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single

general intelligence quotient; and

(b) Evaluation procedures.

(3) Tests are selected and administered so as best to ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

(c) Placement procedures. In interpreting evaluation data and in making placement decisions, a recipient shall

(1) draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior,

(2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered,

(3) ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and

(4) ensure that the placement decision is made in conformity with 104.34.

(d) Reevaluation. A recipient to which this section applies shall establish procedures, in accordance with paragraph (b) of this section, for periodic reevaluation of students who have been provided special education and related services. A reevaluation procedure consistent with the Education for the Handicapped Act is one means of meeting this requirement.

104.36 Procedural safeguards.

A recipient that operates a public elementary or secondary education program shall establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of handicap, need or are believed to need special instruction or related services, a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure. Compliance with the procedural safeguards of section 615 of the Education of the Handicapped Act is one means of meeting this requirement.

104.37 Nonacademic services.

(a) General.

(1) A recipient to which this subpart applies shall provide non-academic and extracurricular services and activities in such manner as is necessary to afford handicapped students an equal opportunity for participation in such services and activities.

(2) Nonacademic and extracurricular services and activities may include counseling services, physical recreational athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the recipients, referrals to agencies which provide assistance to handicapped persons, and employment of students, including both employment by the recipient and assistance in making available outside employment.

(b) Counseling services. A recipient to which this subpart applies that provides personal,

academic, or vocational counseling, guidance, or placement services to its students shall provide these services without discrimination on the basis of handicap.

The recipient shall ensure that qualified handicapped students are not counseled toward more restrictive career objectives than are nonhandicapped students with similar interests and abilities.

(c) Physical education and athletics.

(1) In providing physical education courses and athletics and similar programs and activities to any of its students, a recipient to which this subpart applies may not discriminate on the basis of handicap. A recipient that offers physical education courses or that operates or sponsors interscholastic, club, or intramural athletics shall provide to qualified handicapped students an equal opportunity for participation in these activities.

(2) A recipient may offer to handicapped students physical education and athletic activities that are separate or different from those offered to nonhandicapped students only if separation or differentiation is consistent with the requirements of 104.34 and only if no qualified handicapped student is denied the opportunity to compete for teams or to participate in courses that are not separate or different.

104.38 Preschool and adult education programs.

A recipient to which this subpart applies that operates a preschool education or day care program or activity or an adult education program or activity may not, on the basis of handicap, exclude qualified handicapped persons from the program or activity and shall take into account the needs of such persons in determining the aid, benefits, or services to be provided under the program or activity.

104.39 Private education programs.

(a) A recipient that operates a private elementary or secondary education program may not, on the basis of handicap, exclude a qualified handicapped person from such program if the person can, with minor adjustments, be provided an appropriate education, as defined in 104.33(b)(1), within the recipient's program.

(b) A recipient to which this section applies may not charge more for the provision of an appropriate education to handicapped persons than to nonhandicapped persons except to the extent that any additional charge is justified by a substantial increase in cost to the recipient.

(c) A recipient to which this section applies that operates special education programs shall operate such programs in accordance with the provisions of 104.35 and 104.36. Each recipient to which this section applies is subject to the provisions of 104.34, 104.37, and 104.38.

SUBPART E Postsecondary Education

104.41 Application of this subpart.

Subpart E applies to postsecondary education programs and activities, including postsecondary vocational education programs and activities, that receive or benefit from Federal financial assistance and to recipients that operate, or that receive or benefit from Federal financial assistance for the operation of, such programs or activities.

104.42 Admissions and recruitment.

(a) General. Qualified handicapped persons may not, on the basis of handicap, be denied admission or be subjected to discrimination in admission or recruitment by a recipient to

which this subpart applies.

(b) Admissions. In administering its admission policies, a recipient to which this subpart applies:

(1) May not apply limitations upon the number or proportion of handicapped persons who may be admitted;

(2) May not make use of any test or criterion for admission that has a disproportionate, adverse effect on handicapped persons or any class of handicapped persons unless

(i) the test or criterion, as used by the recipient, has been validated as a predictor of success in the education program or activity in question and

(i i) alternate tests or criteria that have a less disproportionate, adverse effect are not shown by the Assistant Secretary to be available.

(3) Shall assure itself that

(i) admissions tests are selected and administered so as best to ensure that, when a test is administered to an applicant who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the applicant's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure);

(i i) admissions tests that are designed for persons with impaired sensory, manual, or speaking skills are offered as often and in as timely a manner as are other admissions tests; and

(i i i) admissions tests are administered in facilities that, on the whole, are accessible to handicapped persons; and

(4) Except as provided in paragraph (c) of this section, may not make preadmission inquiry as to whether an applicant for admission is a handicapped person but, after admission, may make inquiries on a confidential basis as to handicaps that may require accommodation.

(c) Preadmission inquiry exception. When a recipient is taking remedial action to correct the effects of past discrimination pursuant to 104.6(a) or when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity pursuant to 104.6(b), the recipient may invite applicants for admission to indicate whether and to what extent they are handicapped, Provided, That:

(1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary action efforts; and

(2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential, that refusal to provide it will not subject the applicant to any adverse treatment, and that it will be used only in accordance with this part.

(d) Validity studies. For the purpose of paragraph (b)(2) of this section, a recipient may base prediction equations on first year grades, but shall conduct periodic validity studies against the criterion of overall success in the education program or activity in question in order to monitor the general validity of the test scores.

104.43 Treatment of students; general.

(a) No qualified handicapped student shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination

under any academic, research, occupational training, housing, health insurance, counseling, financial aid, physical education, athletics, recreation, transportation, other extracurricular, or other postsecondary education program or activity to which this subpart applies.

(b) A recipient to which this subpart applies that considers participation by students in education programs or activities not operated wholly by the recipient as part of, or equivalent to, and education program or activity operated by the recipient shall assure itself that the other education program or activity, as a whole, provides an equal opportunity for the participation of qualified handicapped persons.

(c) A recipient to which this subpart applies may not, on the basis of handicap, exclude any qualified handicapped student from any course, course of study, or other part of its education program or activity.

(d) A recipient to which this subpart applies shall operate its programs and activities in the most integrated setting appropriate.

104.44 Academic adjustments.

(a) Academic requirements. A recipient to which this subpart applies shall make such modifications to its academic requirements as are necessary to ensure that such requirements do not discriminate or have the effect of discriminating, on the basis of handicap, against a qualified handicapped applicant or student. Academic requirements that the recipient can demonstrate are essential to the program of instruction being pursued by such student or to any directly related licensing requirement will not be regarded as discriminatory within the meaning of this section.

Modifications may include changes in the length of time permitted for the completion of degree requirements, substitution of specific courses required for the completion of degree requirements, and adaptation of the manner in which specific courses are conducted.

(b) Other rules. A recipient to which this subpart applies may not impose upon handicapped students other rules, such as the prohibition of tape recorders in classrooms or of dog guides in campus buildings, that have the effect of limiting the participation of handicapped students in the recipient's education program or activity.

(c) Course examinations. In its course examinations or other procedures for evaluating students' academic achievement in its program, a recipient to which this subpart applies shall provide such methods for evaluating the achievement of students who have a handicap that impairs sensory, manual, or speaking skills as will best ensure that the results of the evaluation represents the student's achievement in the course, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where such skills are the factors that the test purports to measure).

(d) Auxiliary aids.

(1) A recipient to which this subpart applies shall take such steps as are necessary to ensure that no handicapped student is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination under the education program or activity operated by the recipient because of the absence of educational auxiliary aids for students with impaired sensory, manual, or speaking skills.

(2) Auxiliary aids may include taped texts, interpreters or other effective methods of making orally delivered materials available to students with hearing impairments, readers in libraries for students with visual impairments, classroom equipment adapted for use by students with manual impairments, and other similar services and actions. Recipients need not provide attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature.

104.45 Housing.

(a) Housing provided by the recipient. A recipient that provides housing to its nonhandicapped students shall provide comparable, convenient, and accessible housing to handicapped students at the same cost as to others. At the end of the transition period provided for in subpart C, such housing shall be available in sufficient quantity and variety so that the scope of handicapped students' choice of living accommodations is, as a whole, comparable to that of nonhandicapped students.

(b) Other housing. A recipient that assists any agency, organization, or person in making housing available to any of its students shall take such action as may be necessary to assure itself that such housing is, as a whole, made available in a manner that does not result in discrimination on the basis of handicap.

104.46 Financial and employment assistance to students.

(a) Provision of financial assistance.

(1) In providing financial assistance to qualified handicapped persons, a recipient to which this subpart applies may not

(i , on the basis of handicap, provide less assistance than is provided to nonhandicapped persons, limit eligibility for assistance, or otherwise discriminate or

(i i) assist any entity or person that provides assistance to any of the recipient's students in a manner that discriminates against qualified handicapped persons on the basis of handicap.

(2) A recipient may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established under wills, trusts, bequests, or similar legal instruments that require awards to be made on the basis of factors that discriminate or have the effect of discriminating on the basis of handicap only if the overall effect of the award of scholarships, fellowships, and other forms of financial assistance is not discriminatory on the basis of handicap.

(b) Assistance in making available outside employment. A recipient that assists any agency, organization, or person in providing employment opportunities to any of its students shall assure itself that such employment opportunities, as a whole, are made available in a manner that would not violate subpart B if they were provided by the recipient.

(c) Employment of students by recipients. A recipient that employs any of its students may not do so in a manner that violates subpart B.

104.47 Nonacademic services.

(a) Physical education and athletics.

(1) In providing physical education courses and athletics and similar programs and activities to any of its students, a recipient to which this subpart applies may not discriminate on the basis of handicap. A recipient that offers physical education courses or that operates or sponsors intercollegiate, club, or intramural athletics shall provide to qualified handicapped students an equal opportunity for participation in these activities.

(2) A recipient may offer to handicapped students physical education and athletic activities that are separate or different only if separation or differentiation is consistent with the requirements of 104.43(d) and only if no qualified handicapped student is denied the opportunity to compete for teams or to participate in courses that are not separate or different.

(b) Counseling and placement services. A recipient to which this subpart applies that provides personal, academic, or vocational counseling, guidance, or placement services to its students shall provide these services without discrimination on the basis of handicap. The recipient shall ensure that qualified handicapped students are not counseled toward more restrictive career objectives than are

nonhandicapped students with similar interests and abilities. This requirement does not preclude a recipient from providing factual information about licensing and certification requirements that may present obstacles to handicapped persons in their pursuit of particular careers.

(c) Social organizations. A recipient that provides significant assistance to fraternities, sororities, or similar organizations shall assure itself that the membership practices of such organizations do not permit discrimination otherwise prohibited by this subpart.

SUBPART F Health, Welfare, and Social Services

104.51 Application of this subpart.

Subpart F applies to health, welfare, and other social service programs and activities that receive or benefit from Federal financial assistance and to recipients that operate, or that receive or benefit from Federal financial assistance for the operation of, such programs or activities.

104.52 Health, welfare, and other social services.

(a) General. In providing health, welfare, or other social services or benefits, a recipient may not, on the basis of handicap:

- (1) Deny a qualified handicapped person these benefits or services;
- (2) Afford a qualified handicapped person an opportunity to receive benefits or services that is not equal to that offered nonhandicapped persons;
- (3) Provide a qualified handicapped person with benefits or services that are not as effective (as defined in 104.4(b)) as the benefits or services provided to others;
- (4) Provide benefits or services in a manner that limits or has the effect of limiting the participation of qualified handicapped persons; or
- (5) Provide different or separate benefits or services to handicapped persons except where necessary to provide qualified handicapped persons with benefits and services that are as effective as those provided to others.

(b) Notice. A recipient that provides notice concerning benefits or services or written material concerning waivers of rights or consent to treatment shall take such steps as are necessary to ensure that qualified handicapped persons, including those with impaired sensory or speaking skills, are not denied effective notice because of their handicap.

(c) Emergency treatment for the hearing impaired. A recipient hospital that provides health services or benefits shall establish a procedure for effective communication with persons with impaired hearing for the purpose of providing emergency health care.

(d) Auxiliary aids.

(1) A recipient to which this subpart applies that employs fifteen or more persons shall provide appropriate auxiliary aids to persons with impaired sensory, manual, or speaking skills, where necessary to afford such persons an equal opportunity to benefit from the service in question.

(2) The Assistant Secretary may require recipients with fewer than fifteen employees to provide auxiliary aids where the provision of aids would not significantly impair the ability of the recipient to provide its benefits or services.

(3) For the purpose of this paragraph, auxiliary aids may include brailled and taped material, interpreters, and other aids for persons with impaired hearing or vision.

104.53 Drug and alcohol addicts.

A recipient to which this subpart applies that operates a general hospital or outpatient facility may not discriminate in admission or treatment against a drug or alcohol abuser or alcoholic who is suffering from a medical condition, because of the person's drug or alcohol abuse or alcoholism.

104.54 Education of institutionalized persons.

A recipient to which this subpart applies and that operates or supervises a program or activity for persons who are institutionalized because of handicap shall ensure that each qualified handicapped person, as defined in 104.3(k)(2), in its program or activity is provided an appropriate education, as defined in 104.33(b). Nothing in this section shall be interpreted as altering in any way the obligations of recipients under subpart D.

SUBPART G Procedures

104.61 Procedures.

The procedural provisions applicable to title VI of the Civil Rights Act of 1964 apply to this part. These procedures are found in 100.6 -100.10 and part 101 of this title.